

# REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required.  
A REQUEST CAN NOT BE CONSIDERED IF INFORMATION PROVIDED IS INCOMPLETE, NON-RESPONSIVE, OR DOES NOT  
CLEARLY ADDRESS EACH OF THE REQUIREMENTS INDIVIDUALLY AS REQUIRED.

RFS #

317.05-033

STATE AGENCY NAME :

Finance and Administration

SERVICE CAPTION :

American Express Acceptance & Settlement

PROPOSED CONTRACTOR :

American Express Travel Related Services

CONTRACT START DATE :

(If date is < 60 days after F&A receipt, attach required explanation)

11/1/2005

LATEST POSSIBLE END DATE :

(including ALL options to extend)

10/31/2010

TOTAL MAXIMUM COST :

(including ALL options to extend)

\$350,000

APPROVAL CRITERIA :  
(select one)

☐

use of Non-Competitive Negotiation is in the best interest of the state

☒

only one uniquely qualified service provider able to provide the service

ADDITIONAL REQUIRED REQUEST DETAILS BELOW (address each item immediately following the requirement text)

(1) description of service to be acquired :

To provide the ability for the State of Tennessee to accept payments via American Express credit cards at state facilities and through the State Portal.

(2) explanation of the need for or requirement placed on the procuring agency to acquire the service :

In order to provide American Express cards as a payment option at state parks and through the State Internet Portal, a contract that governs the rules relating to the acceptance and processing of American Express cards is required. The contract with American Express covers rules concerning the state's acceptance of American Express cards, appropriate charges, settlement, payment, and problem resolution. Because the State can only contract with American Express to obtain these services, the contract must be procured on a non-competitive basis. The actual American Express charges are processed electronically through the Visa/Mastercard system. The Division of Accounts maintains a separate contract for this service. That contract is competitively bid.

(3) explanation of whether the service was ever bought by the procuring agency in the past, and if so, what method was used to acquire it :

The State of Tennessee has contracted with American Express since April 30, 1996.

(4) **name and address of the proposed contractor's principal owner(s) :**  
(not required if proposed contractor is a state education institution)

Judy Schonfeld, Vice President

New Industry Development-Government Services

American Express Travel Related Services

3230 W. Commercial Boulevard, Suite 350

Fort Lauderdale, FL 33309

(5) **evidence that the proposed contractor has experience in providing the service and evidence of the length of time the contractor has provided service :**

There is only one corporate entity in the United States that offers such services, American Express.

(6) **documentation of OIR endorsement of the Non-Competitive procurement request :**  
(required only if the subject service involves information technology)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(7) **documentation of Department of Personnel endorsement of the Non-Competitive procurement request :**  
(required only if the subject service involves training for state employees)

select one:



Documentation Not Applicable to this Request



Documentation Attached to this Request

(8) **description of procuring agency efforts to identify reasonable, competitive, procurement alternatives rather than to use non-competitive negotiation :**

There are no alternative ways to establish this contract of acceptance and settlement of American Express cards. The alternative is not to offer the American Express card as a payment option to those obtaining state services.

(9) **justification of why the state should acquire the service through Non-Competitive Negotiation rather than through a competitive process :**  
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

In order to provide the American Express card as a payment option to those obtaining state services, a contract for acceptance and settlement with American Express is required.

**AGENCY HEAD REQUEST SIGNATURE:**  
(must be signed by the **ACTUAL** procuring agency head as detailed on the Signature Certification on file with OCR — signature by an authorized signatory will be accepted only in documented exigent circumstances)

SIGNATURE DATE

  
12/8/04



STATE OF TENNESSEE  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
DIVISION OF ACCOUNTS  
312 EIGHTH AVENUE NORTH  
SUITE 1400 WILLIAM R. SNODGRASS TENNESSEE TOWER  
NASHVILLE, TENNESSEE 37243  
(615) 741-2140  
FAX (615) 532-2332

DAVE GOETZ  
COMMISSIONER

December 16, 2004

Jim White, Director  
Fiscal Review Committee  
G-19 War Memorial Building

Attention: Chris Eaton

Re: Non-Competitive Contract with American Express Travel Related Services

Dear Mr. White,

Pursuant to Tennessee Code Annotated 12-4-109, a request to enter into a non-competitive contract with American Express Travel Related Services is submitted for review by the Fiscal Review Committee.

In order to provide American Express cards as a payment option at state parks and through the State Internet Portal, a contract that governs the rules relating to the acceptance and processing of American Express cards is required. American Express requires an entity to contract directly with it rather than through a bank to accept and process its cards. The contract with American Express covers rules concerning the State's acceptance of American Express cards, appropriate charges, settlement, payment, and problem resolution. Our current contract's term is November 1, 2000 to October 31, 2005. We would anticipate the maximum liability of the new five-year contract to be \$350,000 which would cover the appropriate American Express settlement charges.

Attached to this letter are the following:

- Request for a Non-Competitive Contract
- Copy of the current American Express contract

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, reading "Jan Sylvis", is written over the typed name.

Jan Sylvis, CPA  
Chief of Accounts

Copy: Office of Contracts Review

## CONTRACT SUMMARY SHEET

317.05-009

Contract Number:

FA-01-14342-01

Finance and Administration

Division:

Accounts

Contractor

Contractor Identification Number

American Express Travel Related Services Company

X

V-

C-

13313316407

133133497-07

Service Description

The acceptance of American Express credit card at state facilities

Contract Begin Date

Contract End Date

November 1, 2003

October 31, 2005

Allotment Code

Cost Center

Object Code

Fund

Grant

Grant Code

Subgrant Code

317.05

2008

083

12

on STARS

FY

State Funds

Federal Funds

Interdepartmental Funds

Other Funding

Total Contract Amount  
(including ALL amendments)

2001

100,000

100,000

2002

100,000

100,000

2003

100,000

100,000

2004

100,000

100,000

2005

100,000

100,000

Total:

500,000

500,000

CFDA#

Check the box ONLY if the answer is YES

State Fiscal Contact

Is the Contractor a SUBRECIPIENT? (per OMB A-133)

Name:

Rhonda Hicks

Is the Contractor a VENDOR? (per OMB A-133)

Address:

14th Floor 312 8th Ave N

Is the Fiscal Year Funding STRICTLY LIMITED?

Phone:

741-9795

Is the Contractor on STARS?

Procuring Agency Budget Officer Approval Signature

Is the Contractor's FORM W-9 ATTACHED?

Is the Contractor's Form W-9 Filed with Accounts?

Funding Certification

Pursuant to T.C.A., Section 9-6-113, I, M. D. Goetz, Jr., Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.

## COMPLETE FOR ALL AMENDMENTS (only)

Base Contract & Prior  
AmendmentsThis Amendment  
ONLY

END DATE →

10/31/05

10/31/05

FY: 2001

1,000,000

(900,000)

FY: 2002

-

100,000

FY: 2003

-

100,000

FY: 2004

-

100,000

FY: 2005

-

100,000

Total:

1,000,000

(500,000)

RECEIVED

JUL 11 2003

MANAGEMENT SERVICES

**AMENDMENT ONE  
TO CONTRACT FA 00-14342-00  
BETWEEN THE  
STATE OF TENNESSEE, DEPARTMENT OF FINANCE & ADMINISTRATION  
AND  
AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

This contract, by and between the State of Tennessee, Department of Finance and Administration, and American Express Travel Related Services Company, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section C.1. Maximum Liability in its entirety and insert the following in its place:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Thousand Dollars (\$500,000.00) for payment of goods and services under this Contract. This amount shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. In Section E.2., delete:

The Contractor:  
Rip Creekmore, Director-Government Services  
American Express Travel Related Services Company, Inc.  
12301 Butternut Circle  
Knoxville, TN 37922

And

Yvonne DeCicco, Vice President  
New Industries Development  
American Express Travel Related Services Company, Inc.  
World Financial Center  
New York, NY 10285  
Phone: 212-640-7817 Fax: 212-619-9082

Insert the following in its place:

The Contractor:  
David Picard  
American Express Travel Related Services Company, Inc.  
1000 South Pine Island Road, Suite 444  
Plantation, FL 33324  
Phone & Fax: (888)892.6608

And

Darrell Brookshire  
New Business Partnerships  
American Express Travel Related Services Company, Inc.  
10904 Old Harrods Woods Circle  
Louisville, KY 40223  
Phone & Fax: (800)710.9849

The other terms and conditions of this Contract not amended hereby shall remain in full force and effect.

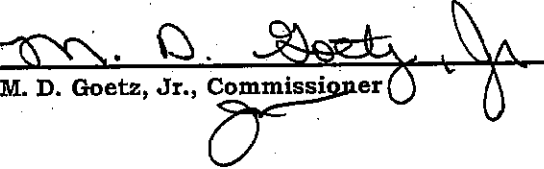
IN WITNESS WHEREOF:

AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.:

  
Judy Schonfeld, Vice President  
New Industry Development-Government Services

6/30/03  
Date

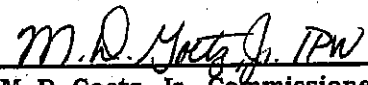
Department of Finance and Administration

  
M. D. Goetz, Jr., Commissioner

7-8-03  
Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION

  
M. D. Goetz, Jr., Commissioner

JUL 11 2003  
Date

COMPTROLLER OF THE TREASURY

  
John G. Morgan, Comptroller

7/14/03  
Date

# CONTRACT SUMMARY SHEET

Contract Number	PA-01-14342-00	State Agency	Department of Finance and Administration
RFS Number	RFS-317.05-001	Division	Accounts <i>Jack Hill</i>
Contractor		Vendor ID Number	
American Express Travel Related Services Company, Inc.		V 133 133 492 07	

Service Description	
The acceptance of American Express credit card at state facilities	
Contract Begin Date	Contract End Date

Allotment Code	Cost Center	Object Code	Fund	Grant	Grant Code	Subgrant Code
317.05	2008	083	12	<input type="checkbox"/> on STARS		

FY	State Funds	Federal Funds	Interdepartmental Funds	Other Funding	Total Contract Amount (including ALL amendments)
<del>2005</del>			\$100,000.00		\$100,000.00
2001			1,000,000.00		1,000,000.00
Total			\$1,000,000.00		\$1,000,000.00

<input type="checkbox"/> Fiscal Year Funding Is Strictly Limited  <input checked="" type="checkbox"/> Contractor Is on STARS  <input checked="" type="checkbox"/> Current Form W-9 On File With Accounts OR <input type="checkbox"/> Form W-9 Attached  <input checked="" type="checkbox"/> Service Provider Registered with F&A  <input type="checkbox"/> Contractor is a SUBRECIPIENT (as defined by OMB Circular A-133)	CFDA Number  State Fiscal Contact  Name: Jack Hill Address: 15 <sup>th</sup> floor, Snodgrass-Tennessee Tower, Nashville, Tennessee, 37243 Phone: (615)532-9612  Procuring Agency Budget Officer Approval Signature  <i>Michael Marrese</i>
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COMPLETE FOR ALL AMENDMENTS (only)			Funding Certification
	Base Contract & Prior Amendments	This Amendment ONLY	Pursuant to T.C.A., Section 9-6-113, I, C. Warren Neel, Commissioner of Finance and Administration, do hereby certify that there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.  F & A BUSINESS & FINANCE  JAN - 4 - 18 1002R Use Only
Contract End Date			
FY			
FY			
FY			
FY			
Total			

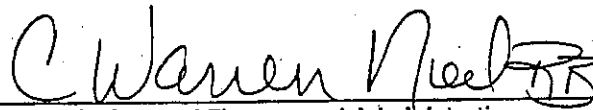
RECEIVED  
 DEC 2 2008  
 DIRECTOR OF A&A

# RULE EXCEPTION REQUEST AND JUSTIFICATION

Messenger Mail to:  
Office of Contracts Review  
12<sup>th</sup> Floor, William R. Snodgrass Tennessee Tower

APPROVED

## Rule Exception



Commissioner of Finance and Administration

Date: 9-7-00

RE: RULE EXCEPTION—:

**XX** REQUEST APPROVAL FOR NON-COMPETITIVE PROCUREMENT

**XX** REQUEST APPROVAL PERMITTING

1. Revised language in C.1. Maximum Liability;
2. Revised language in D.14 Hold Harmless including placement of the Hold Harmless provisions in Section D.
3. Request approval for non-competitive procurement

COMMISSIONER NEEL:

THIS IS TO REQUEST APPROVAL OF THE REFERENCED EXCEPTION(S) TO FINANCE AND ADMINISTRATION RULES, CHAPTER 0620-3-3.

REQUEST DATE:	August 28, 2000
RFS NUMBER:	31705-004
VENDOR:	<u>American Express Travel Related Services Company, Inc.</u>
SERVICE:	<u>Ability of the State to accept payment for American Express cards at State facilities and over the internet.</u>
JUSTIFICATION:	<p>Sole Source Exception: Only one firm provides access and settlement to American Express cards; therefore we are requesting an exception to contract directly with that firm, American Express Travel Related Services.</p> <p>Other contract issues have been negotiated directly between the State and the Department, beginning in March Of 2000 and culminating in a conference call earlier this month between the legal counsel for American Express Travel Related Services and the assistant legal counsel for the Department of Finance &amp; Administration. American Express Travel Related Services would not contract without revised language. The changed language, carried over from a previous contract between the parties, does not change the Contractor's obligation to hold the State harmless or the limits on Contractor's recovery under Tennessee law.</p>
MAXIMUM COST:	<u>\$1,000,000</u>
MAXIMUM TERM:	from <del>October 1, 2000</del> <sup>Nov 10/31</sup> to <del>September 30, 2005</del> (including all options to extend the contract term)

SEP 06 00 P 5:37



Jan Sylvis, Chief of Accounts

Department of Finance and Administration

*Jan Sylvis*

**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**THE DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**AND**  
**AMERICAN EXPRESS TRAVEL RELATED SERVICES COMPANY, INC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration and American Express Travel Related Services Company, Inc., hereinafter referred to as the "Contractor," is for the provision of the acceptance of American Express® Cards at State of Tennessee facilities, as further defined in the "SCOPE OF SERVICES." The State of Tennessee and its departments, agencies, entities and facilities which accept the American Express Card hereinafter are referred to as the "State."

The Contractor is a for-profit corporation. The Contractor's address is:

200 Vesey Street-WFC, 45<sup>th</sup> floor, New York, New York, 10285

The Contractor's place of incorporation or organization is New York.

**A. SCOPE OF SERVICES:**

- A.1. This contract provides for the acceptance of American Express Cards at the State of Tennessee facilities as listed in the attached Appendix A, which is incorporated hereto and which may be amended from time to time upon receiving a mutually agreeable inclusion form. The "American Express Card" and "Card" mean any card or account access device issued by American Express Travel Related Services, Company, Inc., or its subsidiaries or affiliates or its or their licensees, bearing the American Express name or an American Express trademark, service mark or logo. "Cardmember" means the person whose name is embossed on the face of the Card. Payment or purchases made with the Card are "Charges."
- A.2. The State agrees to cause each State Location as defined below to accept the Card under the terms of this Contract in payment for goods and services sold. This includes payments or purchases made in person, by telephone, by mail, via the Internet or by any other method. Each location or method of collecting payments is a "State Location."
- A.3. For every Charge the State agrees to cause each State Location to create a record of Charge or an electronic reproducible record ("Charge Record") containing (1) the Card account number and expiration date; (2) the date the Charge was incurred; (3) the amount of the Charge, which must be the total amount of the payments or purchases on the Card plus applicable taxes; (4) the Authorization approval code number; (5) a mutually acceptable description of the goods or services purchased; (6) an imprint or other registration of the name, address, and account number (merchant number) assigned for each State Location(s); (7) the Cardmember's signature; and (8) the words "no refunds" if the State Location has a No Refund policy.
- A.4. For Charges made in person, the State agrees to cause each State Location to: (1) Create a Charge Record as described in Section A.3. and verify that the Cardmember's signature on the Charge Record reasonably matches the signature on the back of the Card; (2) Verify that the Card is not visibly altered or mutilated; (3) Ensure that the Card is being used within the valid dates shown on the face of the Card; (4) Verify that the Card is

signed in the same name as the name embossed on the front of the Card; and (5) Obtain Authorization as described in Section A.7.

A.5. For all other Charges, such as Charges made by mail, telephone, via the Internet or at unattended State Locations ("Other Charge"), the State agrees to cause each State Location to: (1) Create a Charge Record as described in Section A.3., except with the words ("Mail Order", "Telephone Order," or "Signature on File" on the Cardmember signature line, and (2) Obtain Authorization as described in Section A.7. Online services, the worldwide web and other similar networks are included in the term "Internet." An "Internet Order" occurs when Card payment information is taken online, usually via a website payment page, email or other online network for payment for goods or services.

A.6. If the Cardmember denies making or authorizing a Charge and the State Location has not obtained the Cardmember's signature on the Charge, the Contractor will have the right to Full Recourse for such Charge. The Contractor will not have the right to Full Recourse for such a Charge based upon a claim that the goods were not received if the State Location has (1) verified that the address to which the goods were shipped is the Cardmember's billing address, and (2) obtained a signed receipt verifying the delivery of the goods to the Cardmember at such address.

A.7. The State agrees to cause each State Location to obtain an authorization approval code number ("Authorization") from the Contractor as described in this section. Each Authorization request must be for the total amount for payments or purchases plus applicable taxes. Authorization is not a guarantee that the Contractor will accept the Charge without Full Recourse, nor is it a guarantee that the person making the Charge is the Cardmember. The State agrees cause each State Location not to obtain Authorization on behalf of any other entity. If the State Location is processing a Charge electronically, the State agrees to cause each State Location to transmit full magnetic stripe data with its Authorization request via a swipe of the Card through its electronic authorization terminal. If the magnetic stripe is unreadable and the State Location has to key the transaction to obtain an Authorization, the State agrees to cause each State Location to take a manual imprint of the Card to validate Card presence. If the State Location fails to take a manual imprint for any keyed transaction, the Contractor will have Full Recourse for such Charge.

The State agrees to cause each State Location to obtain Authorization for every Charge regardless of amount. If the State Location does not have an electronic authorization terminal or if the terminal is unable to reach the Contractor's computer authorization system for Authorization, the State Location shall obtain Authorization for all Charges by calling the Contractor at the appropriate authorization telephone number.

The State agrees to cause each State Location to obtain Authorization for all Other Charges and for all Recurring Billing Charges regardless of the Authorization method and the amount of the Charge. Charges for goods or services which are shipped or provided more than thirty (30) days after the order is made, the State agrees to cause each State Location to obtain Authorization for such Charge at the time the order is made and again immediately before the State Location ships the goods or provides the services to the Cardmember.

A.8. When the State Location gives a refund for a purchase made with a Card, the State Location will credit the Card account ("Credit"). The State Location will create a record of Credit ("Credit Record") and submit the Credit to the Contractor within seven (7) days of determining the Credit is due. The State agrees to cause each State Location to issue

Credits only for Charges made with the Card. The State agrees cause each State Location not to give a monetary refund for goods or services purchased with the Card.

- A.9. The State Location's refund policy for purchases made with the Card will be at least as favorable as the State Location's refund policy for purchases made with any other form of payment. The State agrees to cause each State Location to disclose its refund policy to Cardmember at the time of the purchase and in a manner that complies with applicable law.
- A.10. The State agrees to cause each State Location to submit all Charges to the Contractor within (7) seven days of the date they are incurred; provided, however, that the State Location shall not submit any Charge until the goods or services purchased have been delivered to the Cardmember. The State agrees to cause each State Location to submit Credits as described in Section A.8. Charges and Credits will be deemed accepted on a given business day if received and processed before the close of business for that day at the location the Contractor designates. The State agrees cause each State Location to not to submit Charges or Credits on behalf of any other entity.
- A.11. The State warrants that all indebtedness arising from Charges that it submits are genuine and free of any liens, claims, or encumbrances. The State acknowledges that it does not have any right to bill and/or collect from any Cardmember for any purchase made with the Card.
- A.12. When the State Location submits Charges and Credits electronically ("Charge Data"), the State agrees to cause each State Location to do so over communication lines ("Transmission"). When the State Location transmits Charge Data electronically, the State agrees to cause each State Location to create and retain Charge Records and Credit Records.
- A.13. In the event that the State Location submits Charges and Credits on paper, the State agrees to cause each State Location to submit Charge Records and Credit Records on forms approved by the Contractor and in accordance with the instructions the Contractor provides and containing the required information including, but not limited to the assigned Merchant Number. A "Merchant Number" is the number assigned by the Contractor to each State Location accepting the Card.
- A.14. "Transmissions" are Charges and Credits submitted electronically over communication lines. They must contain information required by the Contractor including, but not limited to, the Merchant Number assigned and a description of the goods or services purchased which is acceptable to the Contractor. At the request of the Contractor, the State agrees to cause each State Location to place additional, less, or differently formatted information on Transmissions within thirty (30) days of the written notice from the Contractor. The Contractor is not obligated to accept any Transmission that does not comply with its requirements.
- A.15. For each Charge and/or Credit, the State agrees to cause each State Location to retain the original Charge Record or Credit Record and all documents evidencing such transaction or reproducible record thereof, for twenty four (24) months from the later of the date: (a) the State Location submitted the Charge or the Credit to the Contractor or (2) the State Location fully delivered the goods or provided the services purchased. The State agrees to cause each State Location to provide a copy of the Charge Record or Credit Record and other supporting documents to the Contractor within twenty (20) calendar days of request and acknowledges that the Contractor will have the right to Full Recourse with

respect to any Charge for which the State Location fails to provide such documents within such time period.

- A.16. The State agrees to cause each State Location to honor Cards properly presented in accordance with this Agreement. When a customer asks what payment methods the State Location accepts, the State agrees to cause each State Location to mention the American Express Card. When a Cardmember makes or requests to make a purchase with the Card, the State Location shall not try in any way to persuade the Cardmember to use any other payment method, nor to offer to extend credit or charge services to the Cardmember for that transaction through any other charge, credit, debit, or similar card or service; and shall not criticize or mischaracterize the Card or any service or programs offered in connection with the Card. The State agrees to cause each State Location not to impose any restrictions or conditions on the use or acceptance of the Card that are not imposed equally on the use or acceptance of any other charge, credit, debit or similar card or service. Each State Location shall not display, state, publish or otherwise exhibit a preference for any other charge, credit, debit or smart cards or similar card or service over the Card. Except for special promotions of limited duration funded by an issuer of another charge, credit or debit card; and subject to the State's compliance with the provisions in this section, the State shall not promote or express more actively the use of any other charge, credit, debit or similar card than the State promotes the use over the Card.
- A.17. The State agrees to cause each State Location to display the "American Express" signs, decals and other identification prominently at its State Locations, including the Contractor's "Take One" containers filled with the Card application forms, but only to the same extent that the State causes each State Location to display such materials for other charge, credit, debit, or similar cards or services.
- A.18. The State agrees to cause each State Location not to accept the Card for: Capital obligations and/or extraordinary expenses, including penalties or fines of any kind, damages, losses or any other costs or fees that are beyond the normal basic fee for the goods or services provided, gambling services, gambling chips or gambling credits, cash, goods which will be resold, sales by third parties, or amount which do not represent a bona fide sale of goods or services at a State Location.
- A.19. This Agreement does not give either party any rights in the other party's name, logo, service marks, trademarks, trade names, taglines, or any other proprietary designation ("Marks"). No use may be made of either party's Marks without the prior written permission of that party. Where the State Location mentions the Card as a payment method, the State agrees to cause each State Location to use the American Express Mark, but only as described in the logo sheets. The State agrees that the Contractor may list its name and list the name and address and State Locations in materials containing lists of establishments, including but not limited to the State's web site address, which accept the Card, which the Contractor may publish from time to time.

#### B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on November 1, 2000 and ending on October 31, 2005. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

### C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Dollars (\$1,000,000) for payment of goods and services under this Contract. This amount shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Contract Amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Services Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology for Payment to the Contractor:

The Contractor shall be compensated a rate of 2.25% of gross sales, regardless of the method of Card acceptance by the State (i.e., whether the State accepts the Card via an Internet transaction, via a telephone transaction, via an in-person transaction, or otherwise) as described in Section A. In addition, the Contractor shall be compensated sixty five cents (\$.65) for each Charge for which the State requests authorization by telephone, unless failure to electronically authorize is due to the Contractor computer authorization system being inoperable.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service for the amount stipulated.

- C.4. Payment Methodology for Payment to the State: The Contractor will initiate payment to the State's Account(s) via Automated Clearing House ("ACH") within three (3) business days excluding Sunday and any Federal Reserve holiday after receipt and processing of applicable Charges, as described in Section A. If the payment date falls on a day that the bank is not open for processing ACH payments, the Contractor will initiate payments on the next day that the bank is open for processing ACH payments.

- C.5. Full Recourse: "Full Recourse" means that the Contractor has the right to payment from the State for the full amount of each Charge. The Contractor may deduct, recoup, and offset such amount from payments to the State or the State shall pay the Contractor promptly upon receipt of the Contractor's invoice. The Contractor shall have Full Recourse if the State Location(s) does not comply with the terms of this Contract. The

Contractor will also have the right to Full Recourse as described in Sections A.6., A.7., A.16. and C.6. of this Contract.

- C.6. Disputed Charges: If the Contractor contacts the State regarding a claim, complaint or questions about any Charge ("Disputed Charge") the State agrees to cause each State Location to respond to the Contractor in writing within twenty (20) days. The Contractor will have Full Recourse for the amount of each such Disputed Charge if, by the end of that time period, the State has not provided the Contractor with a written substantive response to the inquiry that includes all documentation the State has relating to the Disputed Charge and that addresses all the aspects of the Cardmember's claim which will enable the Contractor to resolve the dispute. If a Cardmember, despite a reply, continue to withhold payment for such Disputed Charge and the Cardmember has the right under applicable law to withhold such payment, the Contractor will have the right to Full Recourse for such Charge.
- C.7. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.8. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.9. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.10. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State any amounts which are or shall become due and payable to the State by the Contractor.
- C.11. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor, all payments to the Contractor, under this or any other contract the Contractor has with the State, shall be made by ACH. The State shall remain active on receiving payments via ACH for the duration of this or any other contract the Contractor has with the State. The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State. The Contractor shall not be responsible for any obligations, damages or liabilities over and above the amount of the applicable debit, credit or adjustment to the State's account in the event that any such debit, credit or adjustment is not honored by the State's bank or is improperly applied to the State's account.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate the Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date.

The Contractor shall be entitled to receive compensation for satisfactory, authorized services completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered.

Upon such termination, the Contractor shall have no right to any actual, general, specific, incidental, consequential, or any other damages whatsoever of any description or amount, relating specifically to the termination of the Contract by the State.

D.4. Termination for Cause. If the Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to Conflicts of Interest and Nondiscrimination (Sections D.6. and D.7.).

Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such



nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall be acting in their individual capacities and not as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract, subject to the provisions set forth in section D.14. hereunder, entitled, "Hold Harmless."
- D.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, bad faith, negligence, or willful misconduct on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of

attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

While the State will not provide a contractual indemnification to the Contractor, such shall not act as a waiver or limitation of any liability for which the State may otherwise be legally responsible to the Contractor. The Contractor retains all of its rights to seek legal remedies against the State for losses the Contractor may incur in connection with the furnishing of services under this Contract or the failure of the State to meet its obligations under the Contract. It is the intent of the State and the Contractor that any claim by the Contractor under this Contract be limited to the categories and amounts provided in the Tennessee Claims Commission Act, *Tennessee Code Annotated*, Sections 9-8-301, et seq. The preceding sentence is included herein under the State's representation that it is required by State of Tennessee law and shall cease to apply to the extent that changes in State of Tennessee law allow for further recovery by State contractors.

- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee that may arise under this Contract.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Jack Hill, Division of Accounts  
Department of Finance and Administration  
312 8<sup>th</sup> Avenue North, 16<sup>th</sup> floor, Nashville, TN 37243  
Phone: 615-532-9612 Fax: 615-532-0471.

The Contractor:

Rip Creekmore, Director-Government Services  
American Express Travel Related Services Company, Inc.  
12301 Butternut Circle  
Knoxville, TN 37922

And

Yvonne DeCicco, Vice President  
New Industries Development  
American Express Travel Related Services Company, Inc.  
World Financial Center  
New York, NY 10285  
Phone: 212-640-7817 Fax: 212-619-9082

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving State Location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

E.3. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed; except that the Contractor may indicate that the State accepts the Card.

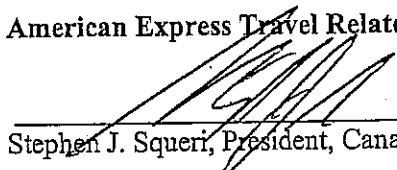
E.4. Confidentiality. Each party shall keep confidential and not disclose to any third party the terms of this Agreement and any information it receives from the other party that is not publicly available.

The State agrees that the names, addresses and account numbers of Cardmembers are our sole and exclusive property. The State must not use or disclose any Cardmember's name, address or account number except as provided in this Contract or as required under applicable law.

- E.5. It is expressly understood and agreed that the Contractor's rights relating to Full Recourse, Disputed Charges, Confidentiality, Hold Harmless (D.14.) and Termination (D.3. and D.4.) shall survive the termination of this Contract.
- E.6. Year 2000 Hold Harmless. As required by Tennessee Code Annotated, Section 12-4-118, the Contractor shall hold harmless and indemnify the State of Tennessee, its officers and employees, and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

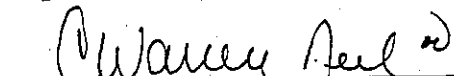
**IN WITNESS WHEREOF:**

**American Express Travel Related Services Company, Inc.:**

  
Stephen J. Squeri, President, Canada & U.S., Establishment Services

DATE: \_\_\_\_\_


**Department of Finance and Administration:**

  
C. Warren Neel, Ph.D., Commissioner

DATE: 11-30-00

**APPROVED:**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

  
C. Warren Neel, Ph.D., Commissioner

DEC 13 2000

DATE: \_\_\_\_\_

**COMPTROLLER OF THE TREASURY:**

  
John G. Morgan, Comptroller of the Treasury

DATE: 12/18/00

**APPENDIX A**  
**STATE OF TENNESSEE**

**Agency/Department**

**Sample Listing Of Applications**

Department Of Environment and Conservation

Existing Amex Merchant Numbers for State  
Park Facilities

Department of Wildlife Resources

Existing Amex Merchant Numbers

Department Of Safety

Existing Amex Merchant Numbers